S.B. Civil First Appeal No.442/2007
Mst. Laxmi & Ors.
vs
Rajendra & Ors.

Date of order : 11.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Chaitanaya Gahlot,for the appellants.
Mr.Sandeep Saruparia, for the respondents.

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At the request of learned counsel for the parties, the appeal itself is heard finally.

The appellants' contention is that the case was fixed for the evidence of the defendants on 3rd April, 2006 and on that day no instruction was pleaded by their counsel and the trial court closed the evidence of the defendants on the same day and thereafter, decreed the suit of the plaintiffs. Since there was no evidence in rebuttal of the defendants, therefore, the suit was decreed. According to learned counsel for the appellants, the appellants had no knowledge that their advocate will plead no instruction on 3rd April, 2006. It is also submitted that on 2.2.2006, the plaintiffs' evidence was closed and first date for evidence of the defendants was fixed on 6th March, 2006 and on 3rd April, 2006 the counsel for the appellants-defendants pleaded no instruction. It is submitted that a liberal view be taken and the appellants may be given an opportunity to produce their evidence.

Learned counsel for the plaintiffs-respondents submitted that appellants-defendants themselves did not appear for evidence on 6th March, 2006 and on 3rd April, 2006 and there was no explanation for their non-appearance. It is submitted that on that date, the date was fixed for evidence of the defendants. It is also submitted that the counsel pleaded no instruction then court had no option but to close the evidence as witnesses of the defendants-appellants were not present in court.

I considered the submissions of learned counsel for the parties and perused the record also.

It is clear from the order dated 2.2.2006 that plaintiffs' evidence was closed and thereafter, the first date was fixed for evidence of the defendants i.e., 6th March, 2006. On that date, the time was sought for evidence of the defendants and time was granted by the trial court. On next date only, the defendants' advocate pleaded no instruction and the trial court without giving any notice to the defendants closed the evidence of the defendants.

In view of the above reasons, the trial court should have either issued notices to the defendants because of the reason that no more adjournments were sought by the defendants after 6th March, 2006 and on 3rd April, 2006 only no instruction was pleaded by the counsel of the defendants. Since the order dated 3rd April, 2006 cannot be sustained, therefore, the decree under challenge passed without evidence of the defendants-appellants deserves to

be set aside.

In view of the above reasons, the appeal is allowed. The order dated 3rd April, 2006 is set aside. Both the parties are directed to remain present before the trial court on 8.10.2007. On 8.10.2007, the trial court may record the evidence of the defendants and their witnesses or may fix any other date for recording statements of the defendants and defendants' witnesses. The trial court is expected to decide the suit expeditiously by following the process of law. The cost of Rs.5,000/- is awarded upon the appellants-defendants. On payment of the said cost, the appellants shall be entitled to produce their evidence.

(PRAKASH TATIA), J.

c.p.goyal/-